



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 3308 OF 2018

PRACHI W/O SHAYM JIBHAKATE
VERSUS
SATISH S/O SHANTIMAL LODHA AND OTHERS

Mr. A. S. Barlota, Advocate for the appellant
Mr. G. S. Yadav, Advocate for respondent No.2
Mr. S. V. Kulkarni, Advocate for respondent No.3

WITH

FIRST APPEAL NO. 2670 OF 2009
WITH CA 8178 OF 2017

SATISH S/O SHANTIMAL LODHA
VERSUS
PRACHI W/O SHAYM JIBHAKATE AND OTHERS

Mr. Rahul R. Totala, Advocate h/f Mr. S. V. Lohiya, Advocate for the
appellant
Mr. G. S. Yadav, Advocate for respondent No.2
Mr. S. V. Kulkarni, Advocate for respondent No.3

CORAM : R. M. JOSHI, J.
DATE : 16th JANUARY, 2024

P.C. :-

1. These appeals are filed under Section 173 of Motor Vehicle Act (for short 'MV Act') by claimant and owner taking exception to the judgment and award dated 20/06/2009 passed in Motor Accident Claim No. 186/2005.

2. The parties are referred to by their nomenclature in the original proceeding for the sake of convenience.

3. The facts which led to the filing of present appeals can be narrated in short as under:

(i) Claimant, a married lady aged about 27 years, an Architect by profession was proceeding as a pillion rider on motorcycle rode by her husband, on 06/01/2005 at about 8.30 pm at Sahakar Nagar road. When they reached the spot of accident, a motorcycle bearing No. MH-20 AL 4050 came from back side with in high and excessive speed and gave dash to the motorcycle of claimant. As a result of said dash claimant and her daughter were thrown away due to which serious injuries were caused to the claimant to her vertebra and spinal cord. She was admitted in Bajaj hospital as indoor patient and was also required to take treatment in other hospital. It is claimed by her that even after the filing of the petition she is required medical treatment for rest of her life. According to her owing to the injuries caused in the accident she is paralyzed and cannot perform even her routine activities much less professing her career as architect. She claimed to have the earning Rs. 3 lakhs per annum. It is also claimed that a sum of Rs.1.5 lakh was already spent on treatment and further requirement of Rs.8 lakhs for future medical treatment is anticipated.

(ii) The owner of the motorcycle filed written statement at Exhibit 33. Though he admitted the ownership of motorcycle in question he denied that the rider of the motorcycle was authorized by him to ride the same. He is also denied the involvement of the motorcycle in the accident in question. It is alleged that false record has been created by wrongly involving his motorcycle in the accident. The rider of the motorcycle also filed written statement at Exhibit 53 denying his riding motorcycle at the relevant time and alleging his false implication in the crime. Other contentions of claimant are also denied by both.

(iii) Insurer filed written statement at Exhibit 20 denying the coverage of motorcycle in question under any policy during the relevant period. Issues were framed at Exhibit 44. the claimant examined herself and led evidence of her husband and Dr. Wahegaonkar (Exhibit 84). The learned Tribunal allowed claim and directed payment of compensation of Rs.11,90,000/- with interest at the rate 9% per annum by holding owner and rider jointly and severally liable for payment of compensation.

4. Learned counsel for the claimants submits that the Tribunal has failed to consider the fact that the injured is an architect and owing to the paralyzed condition, she cannot perform a profession as architect and as such there is 100% loss of earning capacity is caused to the

injured. It is submitted that injured is also entitled for compensation towards loss of future prospects to the extent of 50% income. It is also sought to be argued that adequate compensation has not been paid for loss of enjoyment of marital life, discomfort pain and suffering. He further claimed that a future medical expenses are not adequately granted by the Tribunal.

5. Learned counsel for the owner opposed the said contention and challenged the impugned award by the contending that without there being any evidence the Tribunal has committed error in considering the income of injured at the rate of Rs.5000/- per month. It is also contended that the Tribunal has not appreciated the fact that the first information report has been lodged after two days of the accident and hence the possibility of false implication of the motorcycle in the said accident is not ruled out. It is submitted that in absence of any panchnama of the vehicle being drawn, it cannot be proved that the said vehicle was involved in the accident. He sought to argue that in fact the accident has occurred due to the negligence of the husband of the injured and in order to falsely make the claim of compensation the owner of some other vehicle is impleaded as party thereto. It is also argued that the Doctor has not been examined in order to prove the medical bills and also the assessment the permanent disability is not proper.

6. Learned Tribunal has not fasten liability of payment of compensation on insurer. Both claimant and owner of offending vehicle have not challenged the said finding and it has attained finality.

7. Though it is sought to be argued on behalf of the owner that his motorcycle was not involved in the accident, however, the evidence on the record does not indicate so. Claimant examined herself at Exhibit 48 and her in cross examination except for the denial that the accident has not occurred due to the negligence of the rider, nothing is elicited from her cross in order to discard her testimony with regard to the manner in which the accident has occurred. In this regard it is pertinent to note that in cross examination of husband of claimant (Exhibit 49) it was suggested that the rider with motorcycle was present at the spot and in fact he tried to help the injured. This suggestion shows that the motorcycle owned by owner was very well present at the spot and that the same was driven by the respondent rider. As far as the delay in lodging of the report is concerned, it cannot be ignored that the claimant who is a lady had sustained serious injuries to her spine and hence it was obvious that instead of the reporting the incident to the police any husband would think it fit to provide her medical treatment first. Even in the cross-examination conducted on behalf of the rider of the motorcycle he stated that he never told the doctor that unknown vehicle gave dash

to his motorcycle. Though it was suggested in the cross-examination by the rider by saying that he was not riding the motorcycle but this suggestion is contrary to the suggestion made by the owner to this witness. There is no suggestion in order to show that there would be any reason for falsely implicating him in the said accident. This Court, therefore, does not find any substance in the contention raised by the owner that it is a case of false implication of his motorcycle in accident in question. The evidence on record more than sufficiently demonstrates that the rider was present at the spot along with the motorcycle and he is responsible for causing of accident. The findings recorded by the learned Tribunal therefore do not deserve interference with regard to the negligence on the part of the rider of the motorcycle in causing of the said accident.

8. Undisputedly, claimant is an architect as the said fact has been confirmed during her as well as her husband's cross-examination. No doubt the initial burden is on the claimant to prove her income. In this regard evidence on record shows that except for two cheques of the year 2004 and 2005 for Rs. 2000/- and Rs.15000/- each, there is no evidence on record in order to show the actual income of claimant. It is responsibility of Tribunal to ascertain just compensation. Once the occupation of claimant is proved, having regard to the nature of

occupation and earning capability income is required to be determined. Even in absence of any proof of income notional income needs to be considered. Learned Tribunal by taking into consideration fact that the claimant is an architect has assessed her income at Rs.5000/- per month. Even in case of a labour the notional income during the relevant period was considered not less than Rs.3000/-. Having regard to the qualification and profession of the claimant the assessment of income being reasonable does not deserve interference.

9. Hon'ble Apex Court in case of ***Mohd. Sabeer alias Shabir Hussain V. Regional Manager, U.P. State Road Transport Corporation, AIR 2023 Supreme Court 186*** has held as under:

"18. It is a well settled position of law that in cases of permanent disablement caused by a motor accident, the claimant is entitled to not just future loss of income, but also future prospects. It has been reiterated by this Court in multiple instances that "just compensation" must be interpreted in such a manner as to place the claimant in the same position as he was before the accident took place."

In view of this position of law settled by Hon'ble Apex Court, claimant's case for future prospects deserves acceptance.

10. It is a contention of the claimant that she is paraplegic meaning thereby she has lost all her sensation below waist. The paraplegia is a

form of paralysis of lower body which restricts everyday routine involving physical activity. The said situation of the claimant is irreversible and as opined by Dr. Wahegaonkar it is a permanent disability caused to the claimants. Owing to the said disability for sure it is not possible for the claimant to perform her profession as an architect or even any other occupation. Needless to say that she will not be in a position to do anything to earn her livelihood. She has to totally depend on others for her survival. In such circumstances, though the disability is assessed by learned Tribunal at 50%, this is a fit case wherein it needs to be held that the claimant has lost 100% earning capacity.

11. Thus, taking income of injured at the rate of Rs.5000/- per month with addition of 40% towards future prospects, considering age of injured, the multiplicand would come to Rs.7000/- per month. The annual income would come to Rs. 84,000/-.

12. Having regard to the age of claimant, multiplier of 17 applies. The loss of income is determined at Rs.14,28,000/-. Entire amount of compensation deserves to be granted as claimant has lost 100% earning capacity owing to permanent disability. Hence, modification is required in the impugned judgment and award to that extent. The learned Tribunal has granted compensation of Rs.1 lakh for loss of amenities of life

including marital life. It has also considered the need of the claimant to engage an attendant and for this purpose compensation of Rs.1.5 lakh is awarded. Similarly, the medical expenses are accepted to the extent of Rs.3 lakhs. In the facts and the circumstances of the case this assessment requires no modification. Thus, the claimant would be entitled to receive following amount under different heads.

Sr. No.	Heads	Calculations in (Rs.)
1.	Loss of income Income of claimant = 84,000/- x 17 (Including 40% towards future prospects)	14,28,000.00
2.	Loss of amenities of life	1,00,000.00
3.	Compensation towards attendant	1,50,000.00
4.	Medical Expenses	3,00,000.00
	Total compensation	19,78,000.00

13. In view of the above discussion no case is made out by the owner in causing any interference in the impugned judgment and award whereas claimant succeeds in seeking enhancement. In the result, First Appeal No. 3308 of 2018 is partly allowed and First Appeal No. 2670 of 2009 stands dismissed.

14. Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp